

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Sinclair Oil Corporation

Docket No. OR02-6-001

v.

Rocky Mountain Pipeline System LLC

and

BP Pipelines (North America), Inc.

ORDER ON REHEARING

(Issued September 15, 2003)

1. On February 4, 2003, the Commission issued an order (the February 4 Order) setting for hearing the complaint filed by Sinclair Oil Corporation (Sinclair) against Rocky Mountain Pipeline System LLC (Rocky Mountain) and BP Pipelines (North America), Inc. (BP) (Respondents).¹ Sinclair alleged that certain of Respondents' transportation rates applicable to the Western Corridor system² are, or have been, unjust, unreasonable, unduly discriminatory, and preferential, in violation of the Interstate Commerce Act (ICA).³ BP filed a request for rehearing asserting that the Commission

¹102 FERC ¶ 61,117 (2003).

²Sinclair identified the tariffs as follows: Rocky Mountain's FERC Tariff No. 15, Rocky Mountain's Supplement No. 1 to FERC Tariff No. 15, BP's FERC Tariff Nos. 42 and 90, and Amoco Pipeline Company's (Amoco) FERC Tariff No. 2519. (BP is the successor-in-interest to Amoco.)

³On December 9, 2002, Sinclair amended its complaint to add similar charges with respect to Rocky Mountain's Supplement No. 2 to FERC Tariff No. 15 which established new rates for certain oil movements on the Western Corridor.

erred in not dismissing BP as a respondent. For the reasons set forth below, the Commission denies rehearing.

Background

2. In its complaint Sinclair stated that it is a purchaser and independent refiner of crude oil and that it depends on common carrier pipelines, such as the Western Corridor system, to transport crude oil to its refineries. The Western Corridor pipeline system transports crude oil from the Canadian border to destinations in Wyoming, Montana and Colorado. BP and its predecessor, Amoco Pipeline Company (Amoco), owned an undivided interest in that system with Conoco Pipe Line Company (CPL) from January 16, 1997 until March 1, 2002. On March 1, 2002, Rocky Mountain acquired BP's undivided joint interest in the Western Corridor system, adopted BP's tariffs, and became the operator of that part of the system that is downstream from Billings, Montana. On March 18, 2002, Rocky Mountain filed a new tariff Supplement No. 1 to FERC Tariff No. 15, effective March 19, 2002, that decreased all of the rates that had been carried forward in Rocky Mountain's March 1 adoption of BP's tariff. Despite that reduction in rates, Sinclair contended that Rocky Mountain's rates remain so substantially in excess of its actual costs, that they are unjust and unreasonable.

3. Sinclair asserted that, for more than two years, it has purchased in excess of 100,000 barrels per month of crude oil that has been transported by others on the Western Corridor system. Sinclair purchased the oil at a delivered price at the destination point. Sinclair contended that it had been advised that it must now ship crude oil in its own name as direct shipper on the Western Corridor system. Sinclair claims that Supplement No. 1 to Rocky Mountain's FERC Tariff No. 15 will force Sinclair to bear actual transportation costs on the Western Corridor system that will be considerably higher than the "effective" transportation rates it previously incurred.

4. As to BP, Sinclair alleged that BP, through its previously-effective tariffs, and Rocky Mountain, through its FERC Tariff No. 15 and Supplement No. 1 to FERC Tariff No. 15, have charged unjust, unreasonable, unduly discriminatory, and unduly preferential rates for its transportation services causing shippers using those tariffs to cross-subsidize shippers on other portions of Rocky Mountain's pipeline system. Sinclair asserted that BP and its predecessor Amoco, operated the Western Corridor line so as to effectively foreclose independent shippers from using the line. As a result, the only way in which an independent shipper such as Sinclair could obtain crude oil that had been shipped on the Western Corridor was by purchasing it on a delivered basis at the destination from affiliates of Amoco and BP.

5. Sinclair asserted that it suffered substantial monetary loss, damage and injury as a result of BP and Amoco's violation of the ICA by being precluded from using the pipeline as a direct shipper, and being forced to pay unjust, unreasonable, unduly discriminatory and unduly preferential rates for crude oil that has been shipped for its account on the Western Corridor line. In addition to asking the Commission to prescribe just and reasonable rates for shipments of crude petroleum under the current tariff, it also requested the Commission to award it refunds, reparations, damages, interest on the overcharges, costs, and attorneys fees.

6. Respondents filed answers to the complaint, which generally denied the allegations of the complaint, and also filed motions for summary disposition. In its motion BP argued that the Commission should dismiss the complaint insofar as it names BP as a respondent. BP asserted that neither Sinclair nor any other shipper challenged its Western Corridor transportation rates during the five years that its rates were in effect from 1996 to 2001 when BP operated the system. BP argued that Sinclair directed its complaint at Supplement No. 1 to Rocky Mountain's FERC Tariff No. 15, BP's former tariff, not at any of BP's current rates.

7. BP also denied that it prevented Sinclair access to its capacity on the Western Corridor system. Moreover, even if Sinclair had been denied access, it would have been a denial of access by BP's Canadian affiliate to the Rangeland and Aurora systems, upstream of the Western Corridor and subject to Canadian provincial laws .

8. BP argued that Sinclair suffered no damages or injury as a result of BP's rates and practices applicable to the Western Corridor system because Sinclair admitted that it never paid the actual tariff rates charged by BP. BP emphasized that Sinclair bought delivered crude oil shipped on the Western Corridor to Salt Lake City, Utah presumably at a competitive market price so there can be no claim for reparations against BP. Moreover, BP contended that since BP no longer owns an interest in, or operates the Western Corridor system Sinclair cannot receive any prospective relief from BP.

9. In a response to BP's motion, Sinclair argued that BP made a number of erroneous assumptions and then reached the erroneous conclusion that Sinclair could not have been injured by BP's published rates since Sinclair only paid the price BP should have charged. Sinclair stated that it did not agree that the effective rate should have been the published rate, and it maintained that BP's just and reasonable rate would have been lower than the "effective" rate that Sinclair paid BP's marketing affiliate for the use of the Western Corridor line. Finally, it argued that BP should remain as a respondent because under the Commission's rate regulations, Rocky Mountain cannot properly include the costs of

acquiring the pipeline from BP in its rate base, and instead must use the original rate base used by BP.

10. The February 4 Order stated that while there have been numerous pleadings to date, at the core, the issue presented was Sinclair's contention that the rates charged on the Western Corridor are not just and reasonable. To establish that Sinclair would have to show that the revenues derived from the rates were, and are so substantially in excess of the pipelines' costs, that they are unjust and unreasonable.

11. The February 4 Order stated that the parties had raised disputed and material issues concerning the justness and reasonableness of rates under BP's and Rocky Mountain's tariffs and whether the pipeline companies' actions with respect to transportation on the Western Corridor system unlawfully conferred undue preferences on other shippers or purchasers of crude oil transported through the Western Corridor system. The order concluded that because the current record in this proceeding did not contain sufficient evidence to enable the Commission to resolve the issues, a hearing was necessary to examine the issues.

BP's Request for Rehearing

12. BP asserts that the February 4 Order referred to Sinclair's contentions regarding BP, and BP's contentions in support of its motion for summary disposition in only the most cursory fashion, and without any mention of BP's jurisdictional argument. Moreover, the only reference to BP in the discussion was the following sentence:

The parties have raised disputed and material issues concerning the justness and reasonableness of rates under BP's and Rocky Mountain's tariffs and whether the pipeline companies' actions with respect to transportation on the Western Corridor system unlawfully conferred undue preferences on other shippers or purchasers of crude oil transported through the Western Corridor system.

13. BP contends that the order's sole stated basis for setting this matter for hearing, insofar as it concerns BP, was that there are disputed issues regarding the lawfulness of "rates under . . . BP [Pipelines'] tariffs," yet, BP argues, Sinclair, by its own admission, never paid such rates. Instead, BP notes, Sinclair obtained crude oil from Canada which was transported through a long-standing commercial arrangement with a BP's affiliate, which shipped the crude oil on the Western Corridor to Sinclair. Since under the ICA a complainant seeking relief in the form of reparations must show that it has actually

sustained injury or damages, and Sinclair clearly failed to show such injury or damages here, BP argues that the Commission erred in failing to address this threshold issue and by failing to dismiss Sinclair's complaint against BP.

BP's July 7, 2003 Letter, Sinclair's Response, and BP's Reply

14. In a letter dated July 7, 2003, to the Commission, BP requested that the Commission act on its request. BP stated that its status as a party in this proceeding is causing it considerable burden and expense, and this is not justified in light of the fact that Rocky Mountain, the current owner of the pipeline system at issue here, and the principal target of Sinclair's complaint, appeared to have settled its dispute with Sinclair⁴. BP further asserted that this injustice is compounded by the fact that one of the reasons alleged by Sinclair for not dismissing BP from this case was to be enable Sinclair to obtain discovery from BP of original cost data that would be useful to Sinclair in challenging the rates being charged by BP's successor, Rocky Mountain.

15. In a response dated July 16, 2003, Sinclair disputed BP's assertion. Sinclair argued that it was entitled to reparation from BP, and also contended that BP unlawfully refused access to a common carrier line to any company other than its own marketing affiliates. Sinclair stated that in a further effort to obtain monopoly profits from its ownership of this common carrier pipeline, BP also published exorbitant rates that were then discounted only if a shipper used BP's marketing affiliate to ship products through the pipeline. In a reply dated July 29, 2003, BP refutes Sinclair's allegations in its July 16, 2003 response to BP's July 7, 2003 letter. BP reiterates its contentions in its request for rehearing.

Sinclair's Withdrawal of Complaint Against Rocky Mountain

16. On July 17, 2003, Sinclair filed in this docket a "Withdrawal of Complaint of Sinclair Oil Corporation Against Rocky Mountain Pipeline System, LLC only in Docket No. OR02-6-000." The withdrawal also states that Sinclair was not withdrawing its complaint against BP.

⁴BP cites to the April 3, 2003 Report of Settlement by the Settlement Judge, 103 FERC ¶ 63,002, which merely reported the status of the settlement proceedings. However, BP's contention was correct since Sinclair later withdrew the complaint against Rocky Mountain.

Discussion

17. We will deny rehearing. While we have referred to the letters filed by the parties, we remind the parties that permissible filings are governed by the Commission's Rules of Practice and Procedure, and the exchange of letters is not an appropriate manner for establishing a record on which the Commission can act. Although Sinclair's complaint was not entirely clear, the thrust of it was that the rate BP charged was excessive. Moreover, Sinclair's position has been that it "was not a shipper of record because BP Pipelines refused to permit any company other than its own marketing affiliates to use the pipeline."⁵ Sinclair asserts that "in fact, more than two and a half million barrels of crude oil were shipped on Sinclair's behalf on the BP Pipeline during the period of BP's ownership."⁶

18. Now that Sinclair has withdrawn its complaint against Rocky Mountain, one of Sinclair's reasons for including BP as a respondent, *i.e.*, in order to ascertain the original cost of the acquired asset for calculating Rocky Mountain's rate basis, no longer is a viable contention.

19. Nevertheless, Sinclair's other arguments, such as the claim for reparations, remain to be addressed. Sinclair has contended that its position is consistent with the Commission's ruling in Gaviota Terminal Company, 67 FERC ¶ 61,358 (1994), that the lack of privity is not a bar to seeking damages under the ICA. The Administrative Law Judge hearing the matter can determine what discovery is appropriate in the present circumstances, and whether Sinclair has presented any basis for the proceeding to go forward solely against BP.

⁵Sinclair's July 16, 2003 letter at 2.

⁶Id.

The Commission orders:

BP's request for rehearing is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.